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Dias, Liyanagamage Ranganath Prabashwara

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JAMIE ROMEO

MONROE COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

In the Matter of the Application of

LIYANAGAMAGE RANGANATH PRABASHWARA DIAS,

Petitioner,

-against-

UNIVERSITY OF ROCHESTER,

Respondent.

for a Judgment pursuant to Article 78
of the Civil Practice Law and Rules

AFFIRMATION OF DAVID FIGLIO, PH.D. AND CERTIFICATION OF THE RECORD

Index No. E2024003035

DAVID FIGLIO, Ph.D., affirms, pursuant to N.Y. C.P.L.R. 2106, that the following is true and correct:

1. I am Provost ("Provost") and the Gordon Fyfe Professor of Economics and Education of the University of Rochester (the "University"). I have held this position since July 1, 2022.

2. As Provost, I serve as the University's Chief Academic Officer, overseeing four of the University's main academic units of Arts, Sciences & Engineering, Eastman School of Music, Simon Business School, and Warner School of Education.

3. The University maintains a policy to address allegations of research misconduct (the "Research Misconduct Policy"). (A copy of the Research Misconduct Policy is attached to the *Affirmation of Stephen Dewhurst, Ph.D.*, *Exhibit B*).

4. I am aware that, on or about March 16, 2024, the University received a letter from the National Science Foundation ("NSF") referring to the University for investigation allegations

of misconduct in NSF-funded research. The allegations concerned an Assistant Professor at the University, Dr. Liyanagamage Ranganath ("Ranga") Dias. A true and correct copy of the National Science Foundation's referral letter is attached hereto as **Exhibit A**.

5. I was generally aware of the progress of the University's Investigation into the allegations. However, the individual primarily charged with overseeing the Investigation stages of the University's response to the allegations is Vice President for Research and Research Integrity Officer Dr. Stephen Dewhurst.

6. The Research Misconduct Policy provides for a role for the Provost at the Adjudication step of the process. Specifically, "[t]he Provost . . . will review the report and recommendations, and make the final findings and, if appropriate, determination concerning corrective action." The Research Misconduct Policy further provides, "If termination is determined appropriate, established procedures (*e.g.*, tenure revocation procedures described above for tenured faculty) will be followed."

7. On or about February 8, 2024, the Investigation Committee finalized its final report entitled, "Dias Investigation Committee Report, University of Rochester" (the "Final Investigation Report"). On or about February 9, 2024, I received a copy of the Final Investigation Report, as did NSF. A true and accurate copy of the Final Investigation Report is attached hereto as **Exhibit B**.

8. In making my determination as to "final findings", I reviewed the Final Investigation Report. I also reviewed Dr. Dias' comments to the Investigation Committee's draft investigation report, which he provided to the Investigation Committee on January 29, 2024. A true and accurate copy of Dr. Dias' January 29, 2024 comments is attached hereto as **Exhibit C**.

9. I took particular note of Dr. Dias' concerns related to possible conflicts of interest with respect to the individual members of the Investigation Committee. Therefore, I requested Dr. Dewhurst provide me with his response to Dr. Dias' concerns.

10. On February 13, 2024, Dr. Dewhurst provided me a detailed response to the conflict of interest issue. A true and accurate copy of my correspondence with Dr. Dewhurst is attached as **Exhibit D**.

11. Upon consideration of Dr. Dewhurst's response, and based on the rationale provided therein, I determined that the Investigation Committee had been properly constituted and that the Investigation Committee did not have conflicts of interest.

12. I accepted the findings set forth in the Final Investigation Report.

13. On February 14, 2024, Dean Wendi Heinzelman notified Dr. Dias that I had received, read, and considered the Investigation Committee's Final Investigation Report, including Dr. Dias' comments to the draft investigation report provided on January 29, 2024, and that based on my review of these materials, I accepted the findings and conclusions of the Investigation Committee. A true and accurate copy of Dean Heinzelman's correspondence is attached hereto as **Exhibit E**.

14. On February 21, 2024, Dr. Dias provided a supplemental response to the Investigation Committee's Final Report. A true and accurate copy of Dr. Dias' February 21, 2024 Supplemental Response is attached **Exhibit F**. The Supplemental Response is not a document that was requested or permitted pursuant to our processes. Nevertheless, I considered it. Nothing about it altered my determination that the Investigation Committee's findings in the Final Investigation Report should be adopted.

15. On February 26, 2024, I notified Dr. Dias that I was making a referral to the University Committee on Tenure and Privileges ("UCTP") for termination of his employment for academic cause based on my acceptance of the findings contained in the Final Investigation Report. As the Final Investigation Report substantiated that Dr. Dias fabricated research data, it is my determination that his employment should be terminated for academic cause. A true and accurate copy of my February 26, 2024 correspondence is attached as **Exhibit G**.

16. As an Assistant Professor, Dr. Dias is not tenured. Instead, Dr. Dias is employed pursuant to a contractual term, which in his case extends through the end of the 2024-2025 academic year. The University's policy entitled "Procedures for Revocation of Tenure" provides for the process by which the University may abrogate faculty contracts prior to their scheduled termination date. One of the permissible bases is "academic cause" which is defined as "the failure by a member of the faculty to discharge responsibly their fundamental obligations as a teacher, colleague, or member of the wider community of scholars". [Doc. No. 7, p. 48[1]]

17. Pursuant to the Procedures for Revocation of Tenure policy "in the cases research misconduct", the UCTP "will accept the results of University [the] investigation . . . as determinative of the factual basis concerning the alleged policy violation." [Doc. No. 7, p. 51]. The Procedures for Revocation of Tenure policy provides that the "UCTP will then prepare comments on the case, which may include recommendations concerning the conditions under which the tenure of the faculty member is to be terminated." *Id*.

18. UCTP's recommendation will be forwarded to the President. [Doc. No. 7, p. 51]. "If the President decides to recommend tenure revocation or contract abrogation of the Board of Trustees, the President's recommendation and the products of the faculty process shall both go to

[1] Page references are as indicated on NYSCEF.

the Board." The procedures also provide, "[i]f the President decides against a recommendation to the Board of Trustees of contract abrogation or tenure revocation, that decision will be final. The President may impose lesser sanctions. In doing so, the President should consider any recommendations for such sanctions from the hearing committee or the UCTP." [Doc. No. 7, pp. 51-52].

19. As of the signing of this Affirmation, the UCTP has not issued a recommendation with respect to whether Dr. Dias' contract should be abrogated or not.

20. Therefore, the process for contract abrogation is still in process and no final determination as to Dr. Dias' employment has been reached.

21. I am confident that the research misconduct allegations against Dr. Dias have been handled to date in accordance with the University's policies and procedures.

22. I hereby **certify** that documents attached to this Affirmation as **Exhibits A, B, C, D, E F and G** are true and accurate copies of the records on which I relied in making the decision(s) afforded to the Provost in the Research Misconduct Policy and therefore that they constitute the Administrative Record in the case to date.[2]

[2] Exhibits A, B, and C reference attachments, exhibits, and appendices, respectively, all of which total additional hundreds of pages of material, none of which are being furnished to the Court as part of the Certified Record, but all of which may be submitted at the Court's request.

I affirm this 25th day of March, 2024, under the penalties of perjury under the laws of New York, which may include fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

David Figlio, Ph.D.

22 N.Y.C.R.R. 202.8-b CERTIFICATION

I certify this 25th day of March, 2024, that the foregoing affirmation was prepared on a computer, using "Times New Roman" typeface, in 12-point size, with double-line spacing, and that the total number of words in the affirmation, exclusive of the caption and signature block, as calculated by the word processing used to prepare the affirmation, is 1,238.

Liza R. Magley